

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGONCLERK, US BANKRUPTCY COURT
DISTRICT OF OREGONIn re
Laura Swing and Clarence J. Swing) Case No. 11-60112-fra13

) (CHECK ALL APPLICABLE BOXES)

) ☒ Ch. 7/13 Motion for Relief from) ☒ DEBTOR ☐ Chapter 13 CODEBTOR Stay

) Filed by Creditor:

) GMAC Mortgage, LLC) ☒ Response to Stay Motion filed by Respondent:

Debtor(s)

2011 APR 21 AM 9:54

DOCKETED _____ REC'D _____
PAID _____ DOCKETED _____

1. Debt, Default, Other Encumbrances, Description and Value of Collateral (To be completed by creditor)

a. Description of collateral (car model, year, VIN, property address):

17479 HWY 62, Eagle Point, Oregon 97524

b. Amount of debt: \$ 405,722.80 consisting of principal: \$ 405,722.80; interest: \$ _____; other:
Amount listed consists of principal only.

c. Description, amount and priority of other encumbrances on collateral. If not known, include applicable information from debtor's schedules if available on PACER:

Total debt secured by collateral (total 1.b. + 1.c.): \$ 405,722.80.d. Value of collateral: \$ 350,000.00.Equity in collateral: \$ <83,722.80>, after deducting \$ 28,000.00 liquidation costs.e. Current monthly payment: \$ 28,839.81.

f. If Chapter 13:

(1) \$ 5,937.53 postpetition default consisting of (e.g., \$ _____ payments, \$ _____ late charges, \$ _____ fees):
2 payments (February 1, 2011 through March 1, 2011) of \$2,839.81 each; 2 late charges of \$123.33 each; and other fees of \$11.25(2) \$ 37,809.84 prepetition default consisting of ☒ amounts specified in proof of claim, or, ☐ consisting of:

g. If Chapter 7, total amount of default \$ _____.

RESPONSE (Identify specific items disputed and specify what you contend are the pertinent facts including why there is a postpetition default, if applicable) (to be completed by respondent):

GMAC does not have standing to make this motion for relief.

2. **Relief from stay should be granted because (check all that apply):** *(To be completed by creditor)*

- ☒ Lack of adequate protection because of failure to make sufficient adequate protection payments and lack of a sufficient equity cushion.
- ☐ Lack of insurance on collateral.
- ☒ No equity in the collateral and the property is not necessary for an effective reorganization.
- ☐ Failure of debtor to make Chapter 13 plan payments.
- ☐ Failure of debtor to make payments to secured creditor required by §14 of Chapter 13 plan.
- ☐ Other (describe):

RESPONSE *(Specify why relief from stay should be denied. If respondent proposes to cure a postpetition default, detail the cure by attaching a proposed order using Local Form (LBF) #720.90 available at www.orb.uscourts.gov under Rules & Forms/Local Bankruptcy Forms (LBF)) (to be completed by respondent):*

GMAC does not have standing to make this motion for relief. It is neither the lender shown on the "Note" attached to its motion for relief, nor does it show how it is the Note Holder. It is not the Lender shown on the "Deed of Trust" attached to its motion. Additionally the Deed of Trust may be voidable because MERS is on it, and the "Assignment" may be invalid under Oregon law.

3. **Background** *(To be completed by creditor)*

a. Date petition filed: 01/12/11 Current Chapter: 13 (7 or 13)

If 13, current plan date _____ Confirmed: ☐ Yes ☐ No

If 13, treatment of creditor's prepetition claim(s) in plan:

Creditor's pre-petition claim will be paid pursuant to Section 2(b)(1) of the Plan.

If 7, debtor ☐ has ☐ has not stated on Local Form (LBF) #521 or #521.05 that debtor intends to surrender the collateral.

b. Creditor has a lien on the collateral by virtue of (check all applicable sections and also see ¶6 below):

☒ Security agreement, trust deed or land sale contract dated 01/26/08, and, if applicable, an assignment of said interest to creditor. The security interest was perfected as required by applicable law on 01/31/08.

☐ Retail installment contract dated _____, and, if applicable, an assignment of said interest to creditor. The security interest was perfected on the certificate of title on _____.

☐ Other (describe):

RESPONSE *(Identify any disputed items and specify the pertinent facts) (to be completed by respondent):*

Debtors deny "Creditor" has any valid lien on the subject property.

4. **Request for Relief from Codebtor Stay** (Only Chapter 13)

a. _____, whose address is _____
_____, is a codebtor on the obligation described above, but is not a debtor in this bankruptcy.

b. Creditor should be granted relief from the codebtor stay because (check all applicable boxes): ☐ codebtor received the consideration for the claim held by creditor, ☐ debtor's plan does not propose to pay creditor's claim in full, ☐ creditor's interest would be irreparably harmed by continuation of the codebtor stay as a result of the default(s) described above and/or ☐ because:

RESPONSE (Identify any disputed items and specify the pertinent facts) (to be completed by respondent):
(no boxes checked by movant)

5. **Other Pertinent Information** (To be completed by creditor, if applicable)

☐ Creditor's claim is secured by real property and debtor's filing of this petition was part of a scheme to delay, hinder, and defraud creditors that involved either (a) transfer of all or part ownership of, or other interest in, the real property without creditor's consent or court approval, or, (b) multiple bankruptcy filings affecting the real property. The following facts support this assertion:

☐ Other pertinent information:

RESPONSE (Identify any disputed items and specify the pertinent facts) (to be completed by respondent):
(no boxes checked by movant)

6. **Relief Requested (check all applicable sections):** (To be completed by creditor)

☒ Creditor requests relief from the automatic stay to allow it to foreclose its lien on the above identified collateral, and, if necessary, to take appropriate action to obtain possession of the collateral.

☐ Creditor has a security interest in real property and requests relief from stay with respect to an act against such property and that the relief be binding in any other bankruptcy case purporting to affect such real property filed not later than 2 years after the date of the entry of an order granting this motion.

☐ Creditor requests that the 14-day stay provided by FRBP 4001(a)(3) be waived based on the following cause:

☒ Other (describe and explain cause):

Movant may offer and provide Debtor(s) with information re: a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss Mitigation Agreement, and may enter into such agreement with Debtor(s), provided that any modification of the mortgage obligation must be approved as required by law.

However, Movant may not enforce, or threaten to enforce, any personal liability against Debtor(s) if Debtor(s) personal liability is discharged in this bankruptcy case.

RESPONSE (Identify any disputed items and specify the pertinent facts. If respondent agrees to some relief, attach a proposed order using Local Form (LBF) #720.90 available at www.orb.uscourts.gov under Rules & Forms/Local Bankruptcy Forms (LBF)) (to be completed by respondent):

For the reasons shown in the above Responses, "Creditor" must be denied any and all relief it seeks in this motion.

7. Documents:

If creditor claims to be secured in ¶3.b. above creditor has attached to and filed with this motion a copy of the documents creating and perfecting the security interest, if not previously attached to a proof of claim.

RESPONDENT requests creditor provide Respondent with the following document(s), if any marked, which are pertinent to this response:

- ☐ Postpetition payment history.
☒ Documents establishing that creditor owns the debt described in ¶1 or is otherwise a proper party to bring this motion.
☐ Other document(s) (specific description):

CREDITOR/ATTORNEY

Signature: /s/ Jesse A. P. Baker
 Name: Jesse A. P. Baker
 Address: 4375 Jutland Drive Suite 200; P.O. Box 17933
San Diego, CA 92177-0933
 Email Address: jbaker@piteduncan.com
 Phone No: (858) 750-7600
 OSB#: 100017

RESPONDENT DEBTOR/ATTORNEY (by signing, the respondent also certifies that [s]he has not altered the information completed by creditor)

Without Prejudice
 Signature: Laura Swing
 Name: LAURA SWING
 Address: 17479 Hwy 62
EAGLE POINT OR 97524
 Email Address: _____
 Phone No: 541-826-5799
 OSB#: PRO SE WE FIRED ATTY AUSTIN

RESPONDENT CODEBTOR/ATTORNEY (by signing, the respondent also certifies that [s]he has not altered the information completed by creditor)

Without Prejudice
 Signature: Clarence J. Swing
 Name: CLARENCE J SWING
 Address: 17479 Hwy 62
EAGLE POINT OR 97524
 Email Address: _____
 Phone No: 541-826-5799
 OSB#: PRO SE WE FIRED ATTY AUSTIN

YOU ARE HEREBY NOTIFIED THAT THE CREDITOR IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.